

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JAMES LINDSEY, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
VS.	)	
	)	3:08-CV-1096-G
DALLAS AREA RAPID TRANSIT,	)	
ET AL.,	)	ECF
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Before the court is the motion of the plaintiffs, James Lindsey, et. al. (“the plaintiffs”) for an extension to file a response to the motion to dismiss filed by the United States Department of Labor (“DOL”). For the reasons discussed below, the motion is denied.

**I. BACKGROUND**

This is a class action involving more than 400 plaintiffs. The plaintiffs were all employees of First Transit Incorporated (“First Transit”), the operator of certain fixed route services of the Dallas Area Rapid Transit Authority (“DART” or “the defendant”). Plaintiff’s Original Petition at 6 (attached as Exhibit A to Defendant’s

Notice of Removal). All of the plaintiffs had a five-year employment contract with First Transit. *Id.* When DART took over the direct operation of the transit services, it terminated all of the plaintiffs twenty-seven months before their five-year contracts expired. *Id.* Later, DART rehired about twenty-five percent of the former First Transit employees. Even those rehired, however, were hired without regard for the seniority they had acquired as First Transit employees and received wages and benefits lower than those they had received from First Transit. *Id.*

The plaintiffs believed that an employee protective agreement, to which DART agreed as a condition of its receipt of federal financial assistance, prohibited DART from taking any of these measures against the plaintiffs. *Id.* at 7. As a result, the plaintiffs filed a complaint with the Department of Labor (“the DOL”) on November 25, 2003. *Id.* The plaintiffs also filed a breach of contract claim against DART in state court. Plaintiff’s Response to Dallas Area Rapid Transit’s Motion to Dismiss and Brief in Support (“Response”) at 3. The state court administratively closed that case pending a decision by the DOL. Defendant Dallas Area Rapid Transit’s Motion to Dismiss and Brief in Support (“Motion”) at 1. On April 15, 2008, the DOL issued a decision in favor of DART. *Id.* at 2. Afterwards, the plaintiffs amended their petition in state court to add the DOL as a defendant. *Id.* DART filed a plea to the jurisdiction in the state court case on June 2, 2008. *Id.* Subsequently, the DOL removed the case to this court. *Id.*

On August 1, 2008, the DOL filed a motion to dismiss. The plaintiffs did not file a response to this motion. Instead, they filed a motion for extension of time to file a response. Plaintiffs' Motion to Extend Time to Respond to United States Department of Labor's Motion to Dismiss and Brief in Support ('Motion to Extend Time'). According to this motion, the plaintiffs terminated Jay C. English ("English"), the attorney for the plaintiffs. English therefore concluded that he could not "TAKE ANY ACTION ON BEHALF OF PLAINTIFFS BECAUSE THE ATTORNEY CLIENT RELATIONSHIP HAS BEEN TERMINATED." *Id.* at 1 (emphasis in original). He requested that the court grant an extension until such time as the court ruled on his motion to withdraw, and plaintiffs retained new counsel.

## II. ANALYSIS

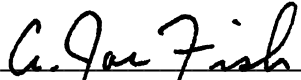
English filed his first motion to withdraw as counsel on July 30, 2008. On August 21, 2008, when English filed the motion to extend time, citing the fact that he no longer represented the plaintiffs, the court had not yet ruled on the motion to withdraw. English therefore still represented the plaintiffs and was required to protect their interests. He could not shirk that duty merely because he no longer desired to represent the plaintiffs. The court's permission was required before he withdrew. The court had not -- and to this day, still has not -- given him that permission. The motion for extension of time to file a response is therefore denied.

### III. CONCLUSION

The plaintiffs' motion for extension of time to file a response to the DOL's motion to dismiss is **DENIED**.

**SO ORDERED.**

February 23, 2009.

  
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A. JOE FISH  
Senior United States District Judge